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NEW YORK, NY 100362711

EXAMINER

EGAN, BRIAN P

ART UNIT	PAPER NUMBER
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1772

9

DATE MAILED: 04/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

T-D-9

# Office Action Summary

Application No.

09/574,836

Applicant(s)

ENGELAERE, JEAN-CLAUDE

Examiner

Brian P. Egan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 27-33 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-26, drawn to a resealable package, classified in class 428, subclass 35.7.
  - II. Claims 27-33, drawn to a method of making a resealable package, classified in class 264, subclass 219.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different products such as catheters.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Charles Miller on April 15, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Drawings*

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, sublayers 3a and 3b must be shown or the features canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

6. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise, and exact. The specification should be revised carefully in order to comply with 35. U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the introduction of the abbreviation "PE" (page 1, line 20) without defining what applicant intends "PE" to mean, as well as the use of prime letters and numbers throughout the specification as indicated on page 4 and continuing throughout the specification, i.e. A', C', 1', 2', 3', and 4'. Given that there is no reference to these prime letters and numbers on any of the drawings, it is especially pertinent that these be revised. The examiner suggests omitting all prime numbers and letters. Proper clarification and/or correction are required.

7. The abstract of the disclosure is objected to because it uses legal phraseology. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means"

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and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Proper correction is required.

### *Claim Objections*

8. The title to the claims section is objected to. Examiner suggests revising "US Claims" to "Claims." Proper correction is required.

9. Claim 17 is objected to for referring to adhesive sublayers 3a and 3b. These sublayers do not exist on any of the drawings and therefore the reference is improper. Proper correction is required.

### *Claim Rejections - 35 USC § 112*

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 13-16, 20, and 25 are rejected under 35 U.S.C. 112, first paragraph, for failing to describe the invention in such a full, clear, concise, and exact terminology as to enable any person skilled in the art to which the invention pertains to make and use the same.

Claims 1, 16, and 20 refer to a "complexable layer." A "complexable layer" is inadequately defined in the specification and it is unclear what "complexable" means. For examination purposes, a layer meeting the material specifications of the claimed complexible

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layer will be considered to be a "complexible layer." Proper clarification and/or correction is required.

Claim 13 is rejected for the use of the term "master batch." A "master batch" was inadequately defined in the specification and it is unclear what is entailed in a master batch.

Proper clarification and/or correction is required.

Claims 14-15, and 25 are rejected for the use of the term "PE" (claims 14 and 25) and "metallocene PE" (claim 15). "PE" was not defined in the specification. For examination purposes, the examiner has defined "PE" to mean polyethylene. If "PE" is intended to be "polyethylene," it is improper to state in a claim (as in claims 14 and 25) that the welding layers are "in PE." Proper language, such as "comprising polyethylene," must be inserted. Examiner suggests deleting "in." Proper correction is required.

11. Claims 1, 7-10, 13, 16, 18-20, 22, and 26 are rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention.

Claim 1 is rejected for the phrase "laid on" in line 6 of the claim. It is unclear what the applicant intends "laid on" to mean. Proper clarification and/or correction are required.

Claims 1 and 20 are rejected for the phrase "facing said container" in lines 6-7 of Claim 1 and line 7 of claim 20. It is unclear how the structure C is both a part of the container while at the same time facing the container. Proper clarification and/or correction are required.

Claim 7 is rejected for the use of the word "rigid" in describing the tub or receptacle. It is unclear how "rigid" something must be to fall within the scope of the applicant's invention.

Proper clarification and/or correction are required.

Claims 7-9 and 22 are rejected for having an improper antecedent basis for "said container (A)." The independent claims 1 and 20 simply state, "(A) a container." Examiner suggests changing the independent claim to read, "A container (A)" to facilitate clarity. Although there are no dependent claims referring to the lid structure, the independent claims 1 and 20 should also be changed to read, "A cover or member lid (B)" as opposed to "(B) a cover member lid" to facilitate clarity. Proper correction is required.

Claim 10 is rejected for being indefinite. The phrase, "in which tearing at said seam takes place within said adhesive layer," is unclear. Proper clarification and/or correction is required.

Claim 13 is rejected for the term "processing agents." It is unclear what is meant by "processing agents." Proper clarification and/or correction are required.

Claim 16 is rejected for the use of the term "identical compositions." It is unclear what makes the compositions identical. Proper clarification and/or correction are required.

Claims 18-19 and 26 are rejected for lacking an antecedent basis for "the coextrusion bubble." There is no mention of a "coextrusion bubble" in any of the preceding claims. Proper correction is required.

In general, the claims are narrative and indefinite, failing to conform with current U.S. practice. The claims appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

13. Claims 1, 6, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Newman et al. (#4,810,541).

Newman et al. disclose a re-closable packaging comprising a container (Fig. 2, #11) having a support layer (Fig. 2, #18), a complexable layer (Fig. 2, #14 and #17), a pressure-sensitive adhesive layer (Fig. 2, #15 and #17), and a tearable polyethylene welding layer (Fig. 2, #19) wherein the complexable layer, pressure sensitive adhesive layer, and tearable welding layer are laid on the support film (See Fig. 2). The re-closable packaging further comprises a lid (Fig. 2, #13) having a polyethylene welding layer (Fig. 2, #22) and a support layer (Fig. 2, #21 and #23), wherein the tearable welding layer and the welding layer are welded along a seam (Col. 2, lines 60-62; See also Fig. 2). Although Newman does not explicitly state that the aforementioned layers are laid directly on the support layer by hot-calendering, this limitation is given little to no patentable weight. Method limitations within article claims are not pertinent to



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the invention unless the applicant can show some form of unexpected results stemming from the method limitation.

14. Claims 1, 6, 7-10, 14, and 16 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Beeuwsaert (#6,345,726).

Beeuwsaert discloses a re-closable packaging (see Abstract) comprising a container (see Fig. 1) having a support layer (Fig. 1, #5), a complexable layer (Fig. 2, #9 and #10), a pressure-sensitive adhesive layer (Fig. 1, #6), and a tearable polyethylene welding layer (Fig. 1, #7; Fig. 2, #s 9-13) wherein the complexable layer, pressure sensitive adhesive layer, and tearable welding layer are laid on the support film (see Fig. 1). The re-closable packaging further comprises a lid (Fig. 1, #3) having a polyethylene welding layer (Fig. 2, #14) and a support layer (Fig. 2, #s 15-18), wherein the tearable welding layer and the welding layer are welded along a seam (See Fig. 2; Col. 3, lines 55-56). The complexable layer and tearable welding layers have identical compositions (Compare Fig. 2, #s 12-13 with Fig. 2, #s 9-10; Col. 3, line 52 to Col. 4, line 53). Although Beeuwsaert does not explicitly state that the aforementioned layers are laid directly on the support layer by hot-calendering, this limitation is given little to no patentable weight. Method limitations within article claims are not pertinent to the invention unless the applicant can show some form of unexpected results stemming from the method limitation. Beeuwsaert further discloses that the container is either rigid or flexible and is thermoformed (Col. 2, lines 45-46). When the lid is removed from the container, the tearing at the seam takes place within the adhesive layer thereby exposing a portion of the adhesive layer (See Fig. 3, area L).

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***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 2-6, 11-12, and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert (#6,345,726) in view of Spiegel et al. (#3,454,210), Engelaere (WO 97/19867), and Clerici et al. (#4,791,024).

Beeuwsaert teaches a re-sealable container as shown above. Beeuwsaert fails, however, to teach a structure comprising a complexable layer, a pressure-sensitive adhesive, and a tearable welding layer being laid on a support via a binding layer, whereby the support is attached to the support layer by lamination, extrusion lamination, or hot-calendering. Beeuwsaert also fails to teach that the pressure sensitive adhesive has a lower melting point than the tearable welding layer, that the pressure-sensitive adhesive is a thermoplastic elastomer-based hot-melt adhesive, and that the structure comprising the complexable layer, pressure-sensitive adhesive, and the tearable welding layer is symmetrical and that the adhesive contains two sub-layers – wherein the structure in this form is obtained by collapsing the coextrusion bubble under oxidizing conditions. Note that all methods of forming, i.e. lamination, extrusion lamination, hot-calendering, and collapsing the extrusion bubble, are given little to no patentable weight within the article limitations of the applicant's claims. Also note that the adhesive layer taught by Beeuwsaert is considered to be a binding layer adhesive. Therefore, to meet the limitations of

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the aforementioned claims, a pressure sensitive adhesive must be found that meets the limitations of the adhesive within the structure 'C' of the applicant's invention.

Spiegel et al. teach a symmetrical multi-layered welding structure that consists of a pressure sensitive adhesive surrounded by material-equivalent polyethylene layers (see Fig. 5), i.e. a tearable welding layer and a complexable layer (Col. 3, lines 13-15). The pressure sensitive adhesive comprises a thermoplastic elastomer-based hot-melt adhesive (Fig. 5; Col. 3, lines 5-9). Spiegel et al. teach that the package comprises at least one tearable film in the multi-layered structure wherein the collapsing of the co-extrusion bubble is done in an oxidizing medium (Col. 3, lines 1-4; Col. 4, lines 48-49). Although Spiegel et al. does not explicitly state whether the adhesive layer has a melting point lower than that of the welding layer, the property is inherently met. Spiegel et al. construct a container in the aforementioned way for the purpose of providing a package that is easily opened while having a positive reclosable feature (Col. 1, lines 64-66) as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences (Col. 4, lines 48-49). It would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have used the multilayer welding structure for a re-sealable container for the purpose of providing a package that is easily opened while having a positive reclosable feature as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences as taught by Spiegel et al.

Clerici et al. teach a dismemberable adhesive junction (fig. 2, #10b and #11b) for the purpose of providing a manually readily openable and reclosable member capable of being jointed with another identical or similar element. Therefore, it would have been obvious through

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routine experimentation to one of ordinary skill in the art to have modified a multilayered structure with opposing equivalent layers with a 2-layered dismemberable adhesive for the purpose of providing a manually readily openable and reclosable member capable of being jointed with another identical or similar element as taught by Clerici et al.

Engelaere teaches a re-sealable container assembly containing a polyurethane binding layer (Page 15, lines 23-26) that attaches the welding and base layers by lamination (Page 9, lines 23-24), extrusion-lamination (Page 9, lines 18-22), or hot-calendering (Page 9, lines 25-26). The polyurethane adhesive was chosen for the purpose of providing the container with an adhesive with nearly permanent tack properties (Page 9, lines 12-13). Therefore, it would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have selected a polyurethane binding layer adhesive for the purpose of providing the container with a nearly permanent tack between layers as taught by Engelaere.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to include a multilayered welding structure as taught by Spiegel et al. in order to provide a package that is easily opened while having a positive reclosable feature as well as to increase the free surface energy of the polyethylene layers through the use of oxidative influences. It would also have been obvious to have modified Beeuwsaert to have included a 2-layered adhesive in the multilayered welding structure as taught by Clerici et al. in order to provide a manually readily openable and reclosable member capable of being jointed with another identical or similar element, i.e. attachment of the tearable welding layer to the complexable layer. Finally, although Beeuwsaert

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teaches a binding layer adhesive, he fails to explicitly state the composition of the adhesive.

Therefore, it would also have been obvious to modify Beeuwsaert to have include a polyurethane-based binding layer that can be either laminated, extrusion laminated, or hot-calendered as taught by Engelaere in order to provide the container with a nearly permanent tack between layers.

17. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert ('726) in view of Takata et al. (#5,167,339).

Beeuwsaert teaches a re-sealable container as described above. Beeuwsaert fails to teach an adhesive comprising from 5-25% by weight of filler or processing agent within the adhesive.

Takata et al., however, teaches a resealable container that has an adhesive that contains between 0 and 95% filler for the purpose of providing a container with a desirable peel strength as well as to provide an adhesive with high heat resistance (Col. 4, lines 51-64). It would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have modified an adhesive layer within a re-sealable container to include between 0 and 95% filler for the purpose of providing a container with a desirable peel strength and high heat resistance as taught by Takata et al.

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to include filler within the adhesive layer of the re-sealable container as taught by Takata et al. in order to provide a container with a desirable peel strength and high heat resistance.

18. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeuwsaert ('726) in view of Jones et al. (#5,882,749).

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Although Beeuwsaert teaches polyethylene-based weldable layers, he fails to explicitly teach the use of metallocene polyethylene.

Jones et al., however, teach the use of polyethylene metallocene in the outer weldable layers of a re-closable package for the purpose of producing a heat sealable layer (Col. 6, lines 16-20). It would have been obvious through routine experimentation to one of ordinary skill in the art at the time applicant's invention was made to have used metallocene polyethylene in a resealable container structure for the purpose of producing a heat sealable layer as taught by Jones et al.


Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have modified Beeuwsaert to specifically use metallocene polyethylene as taught by Jones et al. in order to produce a heat sealable layer.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Egan whose telephone number is 703-305-3144. The examiner can normally be reached on M-F, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
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April 21, 2002